

EXHIBIT 1

INTRODUCTION

On January 16, 2003, Respondent Gregory T. Nelson was an appointed member of the Mendocino County Planning Commission, a body on which he served since approximately 2001. As a public official, Respondent was prohibited by Government Code Section 87100 of the Political Reform Act (the “Act”)¹ from making, participating in making, or using his official position to influence any governmental decision in which he had a financial interest, as defined in Section 87103. In this matter, Respondent impermissibly made a governmental decision in which he had a financial interest.

Originally, in 2001, Edge Wireless, LLC (a wireless communication service provider) entered into a ground space license agreement with the Clara M. Nelson Family Trust (“Trust”). At the time, Respondent was a co-trustee and manager of the Trust for the benefit of his mother. Under the agreement between Edge Wireless and the Trust, Edge Wireless obtained a license to install and operate a tower, antennas, and related equipment for wireless communications on property owned by the Trust. When Respondent’s mother passed away in April 2002, the Trust was dissolved. Respondent received a share of the trust assets, including proceeds from the ground space license agreement with Edge Wireless, of approximately \$4,500 a calendar year.

On or about January 16, 2003, Respondent had received more than \$500 in the prior 12 months under the ground space license agreement when he voted to approve a conditional use permit applied for by Edge Wireless for construction of a new wireless communications facility on other property.

For the purposes of this stipulation, Respondent’s violation of the Act is stated as follows:

COUNT 1: On or about January 16, 2003, Respondent Gregory T. Nelson made a governmental decision in which he had a financial interest by voting to approve a use permit for Edge Wireless, LLC, a company that was a source of income to him of \$500 or more in the 12 months prior to the decision, in violation of Section 87100 of the Government Code.

SUMMARY OF THE LAW

One of the principles upon which the Act is based is that public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

caused by their own financial interests, or the financial interests of persons who have supported them. (Section 81001, subd. (b).) In this regard, one of the stated purposes of the Act is that the assets and income of public officials, which may be materially affected by their official actions, be disclosed, and that the officials disqualify themselves from acting in appropriate circumstances, so that conflicts of interest may be avoided. (Section 81002, subd. (c).)

To prevent conflicts of interest in governmental decision making, Section 87100 prohibits state and local public officials from making, participating in making, or attempting to use their official positions to influence a governmental decision in which they know, or have reason to know, that they have a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on a recognized economic interest of the official. As set forth in more detail below, for purposes of Sections 87100 and 87103, there are six analytical steps to consider when determining whether an individual has a conflict of interest in a governmental decision.²

First, the individual must be a public official as defined by the Act. Section 82048 defines “public official” to include members of a local governmental agency. (See also Regulation 18701, subd. (a).)

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. Under Regulation 18702.1, subdivision (a), a public official “makes a governmental decision” when, among other things, the official votes on a matter, obligates his or her agency to a course of action, or enters into a contractual agreement on behalf of his or her agency.

Third, the official’s economic interests must be identified. An economic interest of a public official includes any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value, provided or promised to, received by, the public official within 12 months prior to the time when the decision is made. (Section 87103, subd. (c); Regulation 18703.3, subd. (a)(1).)

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. Under Regulation 18704.1, subdivision (a), a person (including business entities, source of income, and source of gifts) is directly involved in a governmental decision when that person initiates the proceeding in which the decision will be made, or is a named party in, or the subject of, the proceeding concerning the decision. A person is the subject of a proceeding “if a decision involves the issuance,

² As set forth in Regulations 18700 through 18708, the Commission has established an eight-step analysis for determining whether a public official has a conflict of interest in a governmental decision. The last two steps of the analysis are exceptions that allow a public official to participate in a governmental decision even though the official may have a conflict of interest. The two exceptions are not relevant to this matter.

renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract with, the person.” (Regulation 18704.1, subd. (a)(2).)

Fifth, it must be determined if the effect of the decision on the economic interest will be material. Under Regulation 18705.3, subdivision (a), if a source of income is directly involved in a governmental decision, the financial effect of the decision on the public official is deemed to be material.

Sixth, it must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official. Under Regulation 18706, subdivision (a), a material financial effect on an economic interest is reasonably foreseeable if it is substantially likely, not just a mere possibility, that one or more of the materiality standards applicable to that economic interest will be met as a result of the governmental decision. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

SUMMARY OF THE FACTS

On or about January 16, 2003, at a meeting of the Mendocino County Planning Commission, Respondent voted to approve a conditional use permit for Edge Wireless, LLC. Originally, in 2001, Edge Wireless entered into a ground space license agreement with the Trust. At the time, Respondent was a co-trustee and manager of the Trust for the benefit of his mother. Under the agreement between Edge Wireless and the Trust, Edge Wireless obtained a license to install and operate a tower, antennas, and related equipment for wireless communications on property owned by the Trust. When Respondent’s mother passed away in April 2002, the Trust was dissolved. Respondent received a share of the trust assets, including proceeds from the ground space license agreement with Edge Wireless, of approximately \$4,500 a calendar year.

On or about January 16, 2003, Respondent had received more than \$500 in the prior 12 months under the ground space license agreement when he voted to approve a conditional use permit applied for by Edge Wireless for construction of a new wireless communications facility on other property.

Respondent Was a Public Official as Defined by the Act

As a member of the Mendocino Planning Commission, Respondent was a public official as defined in Section 82048, and was therefore subject to the prohibition against conflicts of interests.

Respondent Made A Governmental Decision

At the January 16, 2003 meeting of the Mendocino Planning Commission, Respondent voted to approve a use permit for Edge Wireless.

Respondent Had an Economic Interest in Edge Wireless

In the 12 months prior to the January 16, 2003 meeting of the Mendocino Planning Commission, Edge Wireless paid Respondent approximately \$4,500 for a license to maintain an antenna on property in which Respondent had an interest.

Respondent's Economic Interest Was Directly Involved in the Decision

Respondent voted to approve a use permit for Edge Wireless. Thus, as the subject of the decision, Edge Wireless was directly involved in the decision made by Respondent.

Applicable Materiality Standard

Since Edge Wireless was directly involved in the decision made by Respondent, any reasonably foreseeable financial effect of the decision on Edge Wireless, which was a source of income to Respondent, is deemed material and constitutes the basis for a conflict of interest.

It Was Reasonably Foreseeable That the Applicable Materiality Standard Would Be Met

A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely (and not just a mere possibility) that the applicable materiality standard will be met as a result of the governmental decision at issue. Edge Wireless was seeking approval of a use permit to construct a new wireless communication facility. Edge Wireless was both a source of income to Respondent and directly involved in the governmental decision the effect of which was to provide Edge Wireless with an opportunity to expand its commercial business activity within Mendocino County. Thus, it was reasonably foreseeable at the time of the decision was made, that the decision would have a material financial effect on Edge Wireless given the presumption that the financial effect on a directly involved source of income is deemed material.

Accordingly, by making a governmental decision in which he had a financial interest, Respondent violated Section 87100.

CONCLUSION

This matter consists of one count of violating Section 87100, and carries a maximum administrative penalty of Five Thousand Dollars (\$5,000).

The conduct of participating in a governmental decision in which an official has a financial interest is one of the more serious violations of the Act as it creates the appearance that a governmental decision was made on the basis of an official's financial

interest. The typical administrative penalty for a conflict of interest violation occurring on or after January 1, 2001³ has ranged from \$2,500 to \$5,000, depending upon the facts of the case.

There are no aggravating or mitigating factors in this matter. In his defense, Respondent claims that he did not receive prior ethics training and was unaware that he had violated the law. Accordingly, the facts of this case justify the imposition of a total administrative penalty of Three Thousand Five Hundred Dollars (\$3,500).

³ The maximum administrative penalty for a violation of the Act has been \$5,000 since that time.